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CORRESPONDENCE

BETWEEN

^{W.S.}
General Grant and Major General Hancock,

RELATIVE TO THE REMOVAL OF

Members of the City Council, New Orleans.

HEADQUARTERS, FIFTH MILITARY DISTRICT,

New Orleans, Feb. 27, 1868.

To Ecl. Maj. Gen. L. Thomas, Adj. Gen., U. S. A., Washington, D. C.:

GENERAL—I have the honor to transmit herewith, copies of my correspondence with the General in Chief, in reference to my recent action concerning the removal from office of certain Aldermen and Assistant Aldermen of the Council of the city of New Orleans, made by me, “for contempt of the orders of the District Commander.”

I request that the same may, in the appropriate manner—as explanatory of my action, and for his information—be laid before His Excellency, the President of the United States, with this, my request, to be relieved from the command of this Military District, where it is no longer useful or agreeable for me to serve.

When relieved, should the exigencies of the service permit, it would be most in accordance with my inclinations, to be sent to Saint Louis, Missouri, there to await further orders.

I am, Very Respectfully,

Your Obedient Servant,

W. S. HANCOCK,

Major General, U. S. Army.

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[The following was forwarded Gen. Grant, Jan. 28, 1868.]

NEW ORLEANS REPUBLICAN.

CITY COUNCIL—OFFICIAL.

BOARD OF ASSISTANT ALDERMEN.

REGULAR MEETING.

CITY HALL, NEW ORLEANS, Feb. 4, 1868.

The Board met in regular session.

Present: Messrs. Sterry, Sampson, Perkins, Mary, Davies, Thezan, Dunn, Straight, Savinet and Joubert.

On motion of Mr. Straight, Mr. Sauvinet was elected President *pro tem*.

The reading of the minutes of the previous meeting, was, on motion of Assistant Alderman Perkins, dispensed with.

COMMUNICATIONS FROM CITY OFFICERS.

The following communication from the Mayor, and accompanying documents from Headquarters, Fifth Military District, were received:

MAYORALTY OF NEW ORLEANS,
City Hall, Jan. 27, 1868.

To the Honorable the Board of Assistant Aldermen:

GENTLEMEN—I transmit herewith a communication from Major General W. S. Hancock, commanding the Fifth Military District, in reference to the proposed election by the Honorable Council, of a Recorder of the Second District of the city.

Very respectfully,
E. HEATH, Mayor.

HEADQUARTERS, FIFTH MILITARY DISTRICT,
Office Secretary Civil Affairs, New Orleans, La., Jan. 25, 1868.

Mayor E. Heath, New Orleans, Louisiana:

SIR—The attention of the Major General commanding, having been called to a resolution of the Board of Assistant Aldermen of the city of New Orleans, adopted on the 21st instant, relative to an election of Recorder of the Second District, I am directed by him to invite your attention to the provisions contained in the first and second sections of the supplementary recon-

struction act of Congress, passed July 19, 1867, and to Paragraph 2, of Special Orders No. 7, from these Headquarters, dated March 28, 1867, copies of which are herewith inclosed.

Very Respectfully,

Your Obedient Servant,

R. CHANDLER,

Captain Thirteenth Infantry, Asst. Sec. Civil Affairs.

AN ACT supplementary to an act, entitled "an act to provide for the more efficient government of the rebel states," passed on the second day of March 1867, and the act supplementary thereto, passed on the twenty-third day of March, 1867.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That it is hereby declared to have been the true intent and meaning of the act of the second day of March, 1867, entitled "an act to provide for the more efficient government of the rebel States," and of the act supplementary thereto, passed on the twenty-third day of March, in the year 1867, that the governments then existing in the rebel States of Virginia, North Carolina, South Carolina, Georgia, Mississippi, Alabama, Louisiana, Florida, Texas and Arkansas, were not legal State governments; and that thereafter said governments, if continued were to be continued subject in all respects to the Military Commanders of the respective Districts, and to the paramount authority of Congress.

SEC. 2, *And be it further enacted,* That the Commander of any District named in said act shall have power, subject to the disapproval of the General of the Army of the United States, and to have effect till disapproved, whenever in the opinion of such commander the proper administration of said act shall require it, to suspend or remove from office or from the performance of official duties and the exercise of official powers, any officer or person holding or exercising, or professing to hold or exercise, any civil or military office, or duty in such District, under any power, election, appointment or authority derived from or granted by, or claimed under any so-called State or the government thereof, or any municipal or other division thereof, and upon such suspension or removal such commander, subject to the disapproval of the General as aforesaid, shall have power to provide from time to time for the performance of the said duties of such officer or person so suspended or removed, by the detail of some competent officer or soldier of the army, or by the appointment of some other person to perform the same, and to fill vacancies occasioned by death, resignation, or otherwise.

HEADQUARTERS, FIFTH MILITARY DISTRICT,

Special Orders No. 7.

New Orleans, La., March 28, 1867.

2. It is hereby announced for the information and guidance of all concerned, that no elections for State, Parish, municipal, or judicial offices, will be held in the State of Louisiana, until the provisions of the laws of Congress, entitled "An act to provide for the more efficient government of the rebel States," and of the act supplemental thereto, shall have been complied with. Until elections are held in accordance with those acts, the law of the Legislature of the State of Louisiana, approved March 15, 1867, which provides for the continuance in the performance of their duties of those persons whose term of office

would otherwise have expired, will govern all cases except those which may be specially acted upon at these Headquarters.

By Command of Major General P. H. Sheridan :

GEO. L. HARTSUFF,

Assistant Adjutant General.

The Board of Aldermen entered, and the Council went into joint session.

Assistant Alderman Joubert explained the object of the session—the election of a Recorder for the Second District, and spoke earnestly in favor of pressing the said election. He submitted for the information of the Board the decree of the Supreme Court of the State of Louisiana, wherein the present incumbent is forbidden to perform the duties and functions of the office, and the Council notified to elect a Recorder. The gentleman then referred to the first order of General Hancock, commanding the Fifth Military District, in which he declares that civil law shall rule with certain restrictions, and believes that the said order was authority in itself for entering into an election.

He therefore moved that the Council proceed immediately to elect a Recorder for the Second District.

Mr. Joubert was followed by Messrs. Perkins, Dewees, Stapleton, Sampson, Sterry, Davies and Burbank, all of whom opposed hasty legislation in the premises. Mr. Perkins was of opinion that the letter of General Hancock amounted to an order.

Mr. Davies referred to an act of the Legislature which retains in office the incumbent.

Mr. Dewees thought that a committee should be appointed to wait upon the General commanding, and explain to him that Mr. Gastinel was still acting Recorder, notwithstanding the decree of the Supreme Court, and that his acts were in consequence illegal.

Mr. Sauvinet vacated the Chair, obtained the floor, and gave his opinion at length in support of the motion of Assistant Alderman Joubert. He concluded his remarks by urging immediate action.

Mr. Graham coincided with the views of Messrs. Sauvinet and Joubert, and expressed himself in favor of immediate action.

Mr. Burbank moved to postpone action on the whole subject matter. Lost by the following vote :

YEAS—Messrs. Burbank, Dewees and Stapleton, of the Board of Aldermen ; and Messrs. Sterry, Sampson, Perkins and Davies, of the Board of Assistant Aldermen.

NAYS—Messrs. Graham, Dumas and Clay, of the Board of Aldermen ; and Messrs. Mary, Thezan, Dunn, Straight and Joubert, of the Board of Assistant Aldermen.

The original motion was then put.

On calling the roll of the Board of Assistant Aldermen, it was ascertained that there was no quorum—two of the honorable members of that body having left the room.

On motion of Mr. Dewees, the Board of Aldermen retired.

HEADQUARTERS, FIFTH MILITARY DISTRICT,

Special Orders No. 28.

New Orleans, La., Feb. 7, 1868.

4. For proceeding to hold an election for Recorder of the Second District, city of New Orleans, in contempt of orders from these Headquarters, the following members of the Boards of Aldermen and Assistant Aldermen, of the city of New Orleans, who voted for the resolution, (military appointments,) are hereby removed, viz :

James Graham, F. E. Dumas, Jno. R. Clay, of the Board of Aldermen ; and

A. Mary, S. Thezan, O. J. Dunn, S. Straight, B. F. Joubert, C. S. Sanviolet, of the Board of Assistant Aldermen.

J. N. Lea, Robt. J. Watson, Gny Duplantier, are hereby appointed members of the Board of Aldermen ; and

Williamson Smith, Geo. Urquhart, J. H. Moore, P. H. Morgan, Chas. Leamont, J. S. Whittaker, appointed members of the Board of Assistant Aldermen.

J. H. Oglesby is appointed a member of the Board of Assistant Aldermen, in place of C. L. Gumbel, resigned.

Upon accepting these appointments, the above named persons will transmit to these Headquarters a copy of the oath prescribed by law.

By Command of Major General Hancock :

GEO. L. HARTSUFF,

Assistant Adjutant General.

[TELEGRAM SENT FEB. 7, 1868.]

HEADQUARTERS, FIFTH MILITARY DISTRICT,

New Orleans, La., Feb. 7, 1868.

Gen. U. S. Grant, Washington, D. C.:

I have removed nine members of the City Council—two white and seven colored—for contempt of the orders of the Military Commander, in proceeding to an election for a Recorder for the Second District, and which is an elective office (under the law) by the people, and not by the Council.

The attempt to hold the election was made while I was absent in Texas, but the Council was referred to General Sheridan's order forbidding election, until reconstruction was completed, without the authority of the Commanding General; nevertheless these members voted for an immediate election, and the project was carried; the election was about to be completed, when one or two members, more timid than these, left, and broke the quorum.

A case in point is the order of General Mower; Special Orders 162, of October 15th, 1867, removing the Jefferson City Council for a like offense.

My action in this matter, was in accordance with the power granted by the Reconstruction Act, which allows the District Commander to suspend or remove persons from office, and to provide from time to time for the performance of the duties of persons removed, by appointments, etc.

W. S. HANCOCK,

Maj. Gen., U. S. Army.

HEADQUARTERS, FIFTH MILITARY DISTRICT,

Special Orders No. 162.

New Orleans, Oct. 15, 1867.

5. For passing an ordinance for the election of city officers in direct violation of Special Orders No. 7, current series, from these Headquarters, the members of the present Board of Aldermen of the city of Jefferson, Louisiana, are hereby removed, and the following named persons appointed to fill the vacancies:

First Ward.—John Moylan, F. B. Stamps.

Second Ward.—Frederic Frye, Benjamin Campbell.

Third Ward.—John Page, J. B. E. Laiche.

Fourth Ward.—Ursin Lavigne, J. H. A. Roberts.

Fifth Ward.—S. N. Burbank.

By Command of Brevet Major General Joseph A. Mower:

GEO. L. HARTSUFF,

Assistant Adjutant General.

[TELEGRAM RECEIVED FEB. 8, 1868.]

Washington, D. C., Feb. 8, 1868.

Major General W. S. Hancock, Commanding:

Suspend your order removing City Council of New Orleans, until full report of reasons is sent. Answer by mail.

U. S. GRANT, General.

[TELEGRAM SENT FEB. 9, 1868.]

HEADQUARTERS, FIFTH MILITARY DISTRICT.

New Orleans, Feb. 9th, 1868. Sunday—2:30, P. M.

Gen. U. S. Grant, Comdg. Army of the U. S., Washington, D. C.:

Your dispatch of February 8th, directing me to suspend my special orders removing certain members of the City Council of New Orleans, until a full report of reasons therefor should be sent to you, was received about 10, A. M. to-day.

I request that you may reconsider your action, and that my order in the premises be not suspended until you have the full report of the reasons called for by you. I telegraphed you at the moment the order was issued, giving as full a statement of my reasons for action as I believed could be made. I referred you to the orders of General Sheridan forbidding elections, which you have on file at your Headquarters, and stated that the City Council had been previously notified of this order by me. I also referred you to an order of General Mower, issued in October last, which sets forth a parallel case, and which you have on file. In that case, an appeal was taken to you, for a reinstatement of the Council removed by General Mower, which appeal you have not sustained. The present case, was in defiance of that example, of General Sheridan's orders, and of my own letter cautioning the Council to desist in this election, and forwarded to you (printed copy) January 26th. It was illegal under the law by which they claimed to act.

I was astonished at this action of the Council, and could not account for it except in the fact that they had been instigated to it by designing men, who believed if I dared to make those removals, that it would end in my own removal from this place, and that they would be protected. At any rate, my self-respect as Commander of this District, made it absolutely necessary that I should take summary measures—regardless of consequences with which partisans might threaten me.

I do not know what fuller report could be furnished in this case, for all the papers explaining my action have been sent to you.

To suspend my order, would be to destroy my usefulness here; and in such case, a sense of what I consider due to me and my position, in this matter, would necessitate a respectful request to be relieved from my present command.

Although I have been here seventy days, this is the second occasion I have taken on my own responsibility to make a removal, the first one two days previous to this; both for grave reasons reported to you in detail by telegraph; and while I fully recognize the power of the General in Chief to disapprove my action, I respectfully request, that as I have acted upon a full knowledge of the facts, the General in Chief may delay his action until he can inform me what further papers or information he may desire in addition to what has been furnished, for a full understanding of the case under consideration.

My action in the premises was originally based upon the first and second sections of the Supplementary Reconstruction Act, of July 9. 1867.

I wait your reply before issuing the order directed.

W. S. HANCOCK,

Maj. Gen. U. S. A., Commanding

[TELEGRAM RECEIVED FEB. 11, 1868.]

Washington, D. C., Feb. 11, 1868.

Major General W. S. Hancock, Commanding:

If your order removing City Council has been executed and new appointments are in, you need not suspend orders as directed.

U. S. GRANT, General.

[TELEGRAM SENT FEB. 11, 1868.]

HEADQUARTERS, FIFTH MILITARY DISTRICT,

Office of Secretary Civil Affairs, New Orleans, Feb. 11, 1868.

General U. S. Grant, Washington, D. C.:

The change in the City Council was an accomplished fact when your dispatch

of the 9th of February was received. Several of the new appointees had already filed copies of their oath of office.

In my selection, I have appointed the best men to office, without regard to their political sentiments. All must take the required oath.

The change will be of immense advantage to the city, as the poor, of which the city is principally composed, are dependent upon the public confidence.

W. S. HANCOCK,

Major General, U. S. A., Commanding.

[LETTER RECEIVED FEB. 27, 1868.]

HEADQUARTERS, ARMY OF THE UNITED STATES,

Washington, Feb. 21, 1868.

Maj. Gen. W. S. Hancock, Commanding Fifth Military District :

GENERAL—Your report of date the 15th instant, in response to a telegram of the General Commanding the Army, dated the 8th instant, in the matter of the removal of certain Aldermen and Assistant Aldermen of the city of New Orleans, for contempt of military orders, is received. In the same matter there has also been received a memorial from said Aldermen and Assistant Aldermen.

From the report and memorial, and your previous telegrams, the following facts appear :

The office of Recorder of the city of New Orleans, is elective by the people, but in case of a vacancy, it is made the duty by law of the Boards of Aldermen and Assistant Aldermen, in joint meeting, to elect *viva voce* a person to fill the vacancy. The office of Recorder of the Second District of New Orleans, was, by the Supreme Court of Louisiana, adjudged vacant, and the city of New Orleans was ordered to be notified to proceed according to law, to elect a Recorder for said District, which judgment was made final January 21, 1868.

In pursuance of this order of the Court, the Boards of Aldermen and Assistant Aldermen met in joint session on the fourth day of February, 1868, to elect a Recorder for said Second District.

At this session was read a communication, written by Captain Chandler, Assistant Secretary Civil Affairs, and purporting to be by your direction, inviting attention to the first and second sections of the supplementary reconstruction act of Congress, passed July 19, 1867, and to paragraph 2, Special Orders No. 7, from Headquarters, Fifth Military District, dated March 28, 1867. At the date of this communication, viz: January 25, 1868, and before any action of either branch of the Council had been had relative to the election therein referred to, you were absent from the city of New Orleans, in the State of Texas.

This communication did not in terms forbid the election, neither did the sections of the act to which it referred, except, as it might be inferred from the second section, wherein the District Commander is empowered under certain restrictions, "to fill vacancies occasioned by death, resignation or otherwise."

Section 9 of this act, as well as the original reconstruction act of March 2, 1867, recognizes the right of the State and municipal authorities to appoint and elect officers under certain restrictions and limitations; but the exercise of this right is subject to the authority of the District Commander.

Subsequent to the issuing of Special Orders, No. 7, referred to, and during the administration of Generals Sheridan and Mower, the City Council of New

Orleans did in some cases fill vacancies in corporation offices under the provisions of Section 24, of the city charter of New Orleans, in the same manner as is provided for filling a vacancy in the office of Recorder.

And after you assumed command, the office of City Attorney was filled under the same authority, and in the same manner. No exception was taken in any case by any of the District Commanders to such action.

On assuming command of the District you announced in General Orders No. 49, of November 29, 1867, that it was your purpose to preserve peace and quiet in your command, and that as a means to this great end you regarded "the maintenance of the civil authorities in the faithful execution of the laws as the most efficient, under existing circumstances." Also that when the "civil authorities are ready and willing to perform their duties, the military power should cease to lead, and the civil administration resume its natural and rightful dominion."

Under this statement of facts, the City Council of New Orleans might reasonably have presumed it to be their right and duty, especially so under the orders of the Court, and your Order No. 49, to fill the vacancy in the office of Recorder, as it appears they did from your report of this case, dated February 15, 1868. The same facts too, in connection with the printed report of their proceedings, embraced in your report of February 15, 1868, precludes the presumption of any intended contempt of the military authority by the members of the City Council.

The case of "Jefferson City Council" is not deemed a parallel one, in this, that they had not their own unquestioned acts in similar cases, nor the order of the District Commander to justify them.

There being no contempt of military authority intended by the Boards of Aldermen and Assistant Aldermen of the city of New Orleans, removed by Special Orders No. 28, Headquarters, Fifth Military District, dated February 7, 1868, and a proper administration of the reconstruction acts not requiring their removal, said Special Orders removing the Aldermen and Assistant Aldermen therein named, and appointing others in their stead, is hereby disapproved and revoked, and the members of the Boards of Aldermen and Assistant Aldermen removed by it, are hereby reinstated, and will resume their duties as Aldermen and Assistant Aldermen of the city of New Orleans, the same as if said order had not been issued.

You will please carry this order into effect.

By Command of General Grant:

JNO. A. RAWLINS,

Bvt. Maj. Gen. and Chief of Staff.

[TELEGRAM SENT FEB. 27, 1868.]

HEADQUARTERS, FIFTH MILITARY DISTRICT,
New Orleans, La., Feb. 27, 1868.

Gen. U. S. Grant, Comdg. Army of the U. S., Washington, D. C.:

Your letter of the 21st inst. is this day received, disapproving and revoking my order, (Special Orders No. 28,) which removes the Aldermen and Assistant Aldermen of the city of New Orleans, therein named, and appointing others in their stead; also reinstating the members of the Boards of Alder-

men and Assistant Aldermen, and directing that they will resume their duties as Aldermen and Assistant Aldermen, the same as if said order had not been issued.

My action in the removal of the members of the City Council of New Orleans—who are reinstated by your order—was adopted after grave deliberation, and, as I believe, was the result of a necessity imposed on me, which could not have been avoided without a disregard of the interests of the public service, and of the obligations imposed on me by the Reconstruction Acts, and by the orders of my predecessor. It is in substance declared in the Reconstruction Acts, that the government of the rebel States, if continued, are to be continued subject in all respects to the Military Commanders of the respective Military Districts, etc. In section 6, of the Act passed March 2d, 1867, it is enacted that “until the people of said rebel States shall be by law admitted to representation in the Congress of the United States, any civil government which may exist therein, shall be deemed provisional only, and in all respects subject to the paramount authority of the United States, at any time to abolish, modify, control or supercede the same.” Under the authority of that section, my predecessor in command of this District issued Special Orders No. 7, dated March 28th, 1867, in which he prohibited the holding of any election for State, parish, municipal or judicial officers, in the State of Louisiana, until the provisions of the laws of Congress shall have been complied with.

The office of Recorder for the Second District in the city of New Orleans, is a judicial office of great importance in the administration of criminal justice. By the laws of the State, that office is elective, and is to be filled by a vote of the people of the District. Since the order of my predecessor was issued, I am not aware that any election by the people has been holden in the State to fill any office; nor am I aware that the City Council has by its action filled any office, other than such as the Council is authorized to fill under the law creating the city government. The City Attorney referred to in your letter, is an officer appointed to transact the legal business of the city, and he is by law to be chosen by a vote of the City Council. The selection of a person to fill the office, is a part of the duty imposed on the City Council by the charter, after it once become an organized body. The

office of Recorder for one of the Districts into which the city is divided, is not an office ~~enacted~~ by law for the administration of municipal business, but is one in which the people of the city at large, and the public in general are interested. It is, therefore, by law filled (in the ordinary condition of things) by an election by the people; and the City Council has no authority to act in relation to it, except it be to provide temporarily to prevent a vacancy in it during the intervals between the elections provided for by law. It is in no sense an office with which the City Council has any concern in the administration of municipal business; and in my opinion was clearly embraced in the term of the order of the 28th March, 1867, issued by my predecessor.

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The Jefferson City Council was removed by General Mower, because they ordered an election to be held for the appointment of their successors. This action on the part of the City Council was in direct contravention of the order referred to; and in my view, the action of the members of the City Council of New Orleans in attempting to fill the office of Recorder for the Second District of the city, was not only in violation of that order, but was also an assumption on their part, of the right to exercise the authority to fill offices of a general nature, which is, by the Reconstruction Acts, specially delegated to the District Commander.

It is true that General Orders No. 40, issued by me, to which you refer, declares that when "insurrectionary force has been overthrown and peace established, and the civil authorities are ready and willing to perform their duties, the military power should cease to lead, and the civil administration resume its natural and rightful dominion." And I conceive that no violence was done to the principle enunciated in the declaration, when I gave effect to the order of my predecessor, and restrained the members of a municipal body from doing an act for which no existing law gave them any authority.

In conclusion, I will only observe that I entertain serious apprehensions that the revocation of my order, and the re-establishment of the Council removed by me, will be injurious to the public interest, and increase the embarrassments under which the community is now laboring. Your order will be immediately executed.

W. S. HANCOCK,

Maj. Gen. U. S. A., Commanding.

HEADQUARTERS, FIFTH MILITARY DISTRICT,

Special Orders No. 44.

New Orleans, La., Feb. 27, 1868.

4. By direction of General Grant, so much of Paragraph 4, of Special Orders No. 28, current series, from these Headquarters, as removes the Aldermen and Assistant Aldermen of the city of New Orleans, therein named, "for contempt of orders from these Headquarters." and appoints others in their stead, is hereby revoked, and the members of the Boards of Aldermen and Assistant Aldermen removed by it, are hereby reinstated, and will resume their duties, the same as if the said orders had not been issued.

So much of Paragraph 2, Special Orders No. 41, current series, from these Headquarters, as appoints certain persons members of the Boards of Aldermen and Assistant Aldermen of the city of New Orleans, in place of previous appointees who had declined or failed to qualify, is, in consequence, also revoked.

By Command of Major General Hancock:

GEO. L. HARTSUFF,

Assistant Adjutant General.

[LETTER RECEIVED MARCH 5, 1868.]

HEADQUARTERS, ARMY OF THE UNITED STATES.

Washington, Feb. 29, 1868.

Major General W. S. Hancock, Commanding Fifth Military District:

GENERAL—Your telegraphic dispatch of the 27th inst., in reply to my order, revoking your order displacing a portion of the City Council of New Orleans, and appointing their successors, is received. There was nothing in my order which doubted your authority to make removals and appointments when the public exigency requires it. I only exercised an authority given to me as General of the Army, under which law both of us find our authority to act in such matters. Your order of removal was based on certain charges which I did not think were sustained by the facts as they were presented to me.

Dispatches of such length as yours should be sent by mail, when there is not a greater necessity for prompt reply than seems to exist in this case.

Very Respectfully,

Your Obedient Servant,

U. S. GRANT, General.

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